

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

STACEY HEMPHILL,)	
)	
Plaintiff,)	
vs.)	NO. CIV-11-1192-HE
)	
JUSTIN JONES, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff Stacey Hemphill, a state prisoner appearing *pro se*, filed this § 1983 action alleging his constitutional rights were violated while he was incarcerated at the Clara Waters Community Correctional Center. The matter was referred to Magistrate Judge Bana Roberts for initial proceedings, consistent with 28 U.S.C. § 636(b)(1)(B) and (C). She has recommended that defendants Franklin and Teegarden be dismissed without prejudice for lack of service of process.

By order dated January 18, 2012, the magistrate judge advised plaintiff of his duty to serve each defendant. When he had not served defendants Franklin and Teegarden within the 120 days required by Fed.R.Civ.P. 4(m), the magistrate judge considered whether the record reflected good cause existed for an extension of time. As the limitations period has not run with respect to the claims asserted against the defendants and there is no evidence in the record demonstrating that the defendants have been evading service, she concluded good cause for an extension of time to serve the parties did not exist.


Plaintiff responded to the Report and Recommendation, asserting that he had the two defendants served at their last known address, where he believed they still worked, and has

no current address for them. He states he does not recall being ordered by the court to re-serve the defendants and makes a conclusory assertion that Franklin and Teegarden have, “as a broader and conspired effort ... deliberately and in bad faith evaded service.” Plaintiff’s objection, p. 4.

Notice was sent to plaintiff on February 24, 2012, and on March 15, 2012, that the summons had been returned unexecuted as to Teegarden and Franklin, respectively. The record does not reflect that plaintiff took any steps to attempt to obtain service on the defendants or seek an extension of time to do so. Under these circumstances and, as the court agrees with the magistrate judge’s analysis that good cause does not otherwise exist for an extension of time to serve the parties, the court adopts the Report and Recommendation and **DISMISSES** defendants Teegarden and Franklin **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated this 20th day of November, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE